

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44*bis*)

Applicant's or agent's file reference 30915-701601	FOR FURTHER ACTION	See item 4 below
International application No. PCT/US2004/018380	International filing date (<i>day/month/year</i>) 10 June 2004 (10.06.2004)	Priority date (<i>day/month/year</i>) 13 June 2003 (13.06.2003)]
International Patent Classification (IPC) or national classification and IPC ⁷ A01N 65/00, A61K 35/78		
Applicant BUI, Can, V.		

1.	This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 <i>bis</i> .1(a).																								
2.	This REPORT consists of a total of 4 sheets, including this cover sheet. In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.																								
3.	<p>This report contains indications relating to the following items:</p> <table style="width: 100%;"> <tr> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 30%;">Box No. I</td> <td style="width: 60%;">Basis of the report</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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4.	The International Bureau will communicate this report to designated Offices in accordance with Rules 44 <i>bis</i> .3(c) and 93 <i>bis</i> .1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44 <i>bis</i> .2).																								

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Date of issuance of this report 13 December 2005 (13.12.2005)
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PATENT COOPERATION TREATY

From the
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PCT

REC'D 10 NOV 2004

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WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing
(day/month/year) **08 NOV 2004**

Applicant's or agent's file reference

30915-701601

FOR FURTHER ACTION

See paragraph 2 below

International application No.

PCT/US04/18380

International filing date (day/month/year)

10 June 2004 (10.06.2004)

Priority date (day/month/year)

13 June 2003 (13.06.2003)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): A01N 65/00; A61K 35/78 and US Cl.: 424/755; 424/725

Applicant

CAN V. BUI

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

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Telephone No. 571-272-1600

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US04/18380

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US04/18380

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims 1-31	YES
	Claims <u>NONE</u>	NO
Inventive step (IS)	Claims <u>1, 4, 7-31</u> <u>5</u>	YES
	Claims <u>2-3, 5-6</u> <u>1-4 & 6-31</u>	NO
Industrial applicability (IA)	Claims <u>NONE</u>	YES
	Claims <u>1-31</u>	NO

2. Citations and explanations:

Claims 1-4 and 6-31 lack an inventive step under PCT Article 33(3) as being obvious over Xiong *et al.* in view of Iwai.

Xiong *et al.* disclose the use of *Brassica oleracea* (cabbage), *Daucus carota* (carrot), *Apium graveolens* (celery), *Petroselinum crispum* (parsley), *Spinacia oleracea* (spinach), aloe vera, *Lycopersicon esculentum* (tomato), *Citrullus vulgaris* (watermelon) and *Citrus aurantifolia* (lime) (claims 18, 23 and 25) in a composition that is dispensed in tablet or granular form to impart health benefits.

Iwai discloses a health drink that contains root crops (carrots, beets), citrus fruits (lime) and honey to be effective in health disorders, such as liver disorders and pernicious tumors.

One would have been motivated to combine the ingredients in order to create a composition with the additive effect of health benefits.

Although none of the references taught the claimed ranges of individual component amounts, variations of components in nutritional compositions were well known in the art. One of ordinary skill in the art would have been motivated to have modified the proportions of active ingredients in the composition in order to enable the content of the preparation to be matched with the demands and needs of individuals which needed treatment. Such variations in amounts of pharmaceutically active ingredients are considered merely optimization of result variables, conventional practice in the art of health food preparation.

Claims 1-31 meet the criteria set out in PCT Article 33(2), because the prior art does not explicitly teach the claimed invention.

Claim 5 meets the criteria set out in PCT Article 33(3), because the prior art does not teach or fairly suggest the use of *Cymbopogon* sp.

Claims 1-31 meet the criteria set out in PCT Article 33(4), and have industrial applicability because the subject matter claimed can be made or used in industry.